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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2190/2012*, **

Communication submitted by:	Leonid Sudalenko and Anatoly Poplavny (not represented by counsel)
Alleged victims:	The authors
State party:	Belarus
Date of communication:	21 July 2012 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 21 August 2012 (not issued in document form)
Date of adoption of Views:	4 April 2018
Subject matters:	Refusal of authorization to hold a peaceful assembly; freedom of expression; effective remedy
Procedural issues:	Exhaustion of domestic remedies; State party's failure to cooperate
Substantive issues:	Freedom of expression; freedom of assembly; effective remedy
Articles of the Covenant:	2 (2) and (3), 19 and 21
Article of the Optional Protocol:	5 (2) (b)

1. The authors of the communication are Leonid Sudalenko and Anatoly Poplavny, nationals of Belarus born in 1966 and 1958 respectively. They claim that the State party has violated their rights under articles 19 and 21, read in conjunction with article 2 (2) and (3), of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The authors are not represented by counsel.

* Adopted by the Committee at its 122nd session (12 March–6 April 2018).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

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The facts as submitted by the authors

2.1 On 4 August 2011, the authors filed a request with the Gomel City Executive Committee to hold several pickets in the central squares of the city of Gomel on 22 August 2011, with the purpose of informing the general public of the politically motivated arrest and detention of their colleague, Aleksander Belyatsky, a human rights defender and Chair of the Viasna Human Rights Centre.[1]

2.2 On 17 August 2011, the Gomel City Executive Committee refused to authorize the pickets, stating that the authors, as organizers of the event, had not fulfilled the requirements set out in decision No. 299 of the Gomel City Executive Committee of 2 April 2008 on the holding of public events in the city of Gomel, which was adopted on the basis of the Public Events Act of Belarus of 30 December 1997. The authors were organizing a public event to be held at a location other than that designated for that purpose in decision No. 299 and had not concluded the required contracts with the city services for the maintenance of security and for medical assistance and cleaning.

2.3 On 13 September 2011, the authors appealed against the decision of the Gomel City Executive Committee to Gomel Central District Court, which rejected their appeal on 6 October 2011. On 14 October 2011, the authors filed a cassation appeal against the decision of Gomel Central District Court with Gomel Regional Court, which was rejected on 8 November 2011. On 2 April 2012 and 18 May 2012, under the supervisory review procedure, the authors appealed against the decision of Gomel Regional Court with the Chair of Gomel Regional Court and the Chair of the Supreme Court of Belarus, respectively. Those appeals were dismissed on 15 May 2012 and 22 June 2012, respectively. The authors did not file an application for supervisory review with the Prosecutor's Office, since they did not consider that it constituted an effective domestic remedy.[2]

The complaint

3.1 The authors claim that the rejection by the national authorities of their request to hold pickets amounts to a violation of their rights under articles 19 and 21, read in conjunction with article 2 (2) and (3), of the Covenant.

3.2 They claim that neither the Gomel City Executive Committee nor the courts considered whether the limitations imposed on their rights under decision No. 299 were justified by reasons of national security or public safety, public order, or protection of public health or morals, or whether they were necessary for the protection of the rights and freedoms of others. They allege that decision No. 299, restricting the holding of all public events in Gomel, a city of 500,000 inhabitants, to a single, remote location, and the requirement to conclude paid contracts with the city services beforehand, unnecessarily limit the very essence of the rights guaranteed under articles 19 and 21 of the Covenant.

3.3 The authors submit that, by ratifying the Covenant, the State party has undertaken, under article 2 thereof, to respect and to ensure all individual rights listed in the Covenant, and to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the Covenant. The authors claim that the State party is not fulfilling its obligations under article 2 (2), read in conjunction with articles 19 and 21 of the Covenant, since the Public Events Act contains vague and ambiguous provisions. For example, article 9 of the Act gives the heads of local executive committees the discretionary right to designate specific permanent areas for the organization of peaceful assemblies, without justification.

3.4 In this context, the authors request the Committee to recommend to the State party that it align its legislation, particularly the Public Events Act and decision No. 299 of the Gomel City Executive Committee, with the international standards set out in articles 19 and 21 of the Covenant.

[1] See *Belyatsky v. Belarus* (CCPR/C/112/D/2165/2012).

[2] The authors refer to *Tulzhenkova v. Belarus* (CCPR/C/103/D/1838/2008).

State party's observations on admissibility

4.1 In a note verbale dated 4 January 2013, the State party submitted its observations on the admissibility of the communication. It argued that the authors had not exhausted all available domestic remedies because they did not appeal to the Prosecutor's Office under the supervisory review procedure, thus their communication was inadmissible under article 5 (2) (b) of the Optional Protocol.

4.2 The State party also submitted that — since the communication had been registered in violation of the provisions of the Optional Protocol — it had discontinued the proceedings regarding the communication and would disassociate itself from any Views that might be adopted by the Committee.

Authors' comments on the State party's observations

5. In a letter dated 6 March 2013, the authors commented on the State party's observations. Referring to the Committee's jurisprudence, they pointed out that an appeal to the Prosecutor General under the supervisory review procedure did not constitute an effective remedy.[3] The authors added that an appeal under the supervisory review procedure to the Prosecutor's Office and/or to the Chairs of the higher courts has proven to be ineffective even in death penalty cases. They referred to the fact that Vladislav Kovalev was executed while his appeal under the supervisory review procedure was still pending before the Supreme Court of Belarus.[4]

Issues and proceedings before the Committee

Lack of cooperation by the State party

6.1 The Committee notes the State party's assertion that there are no legal grounds for the consideration of the authors' communication, insofar as it was registered in violation of the provisions of the Optional Protocol, and that, if a decision is taken by the Committee on the present communication, the authorities of the State party will "disassociate" themselves from the Committee's Views.

6.2 The Committee recalls that by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and article 1). Implicit in a State's adherence to the Optional Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications and, after examination, to forward its Views to the State party and to the individual (article 5 (1) and (4)). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of a communication and in the expression of its Views.[5] It is up to the Committee to determine whether a case should be registered. By failing to accept the competence of the Committee to determine whether a communication should be registered and by declaring outright that it will not accept the Committee's determination of the admissibility and of the merits of the communications, the State party has violated its obligations under article 1 of the Optional Protocol.

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

[3] The authors refer to *Iskiyaev v. Uzbekistan* (CCPR/C/95/D/1418/2005).

[4] See *Kovalev et al. v. Belarus* (CCPR/C/106/D/2120/2011).

[5] See, for example, *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977–1981, 2010/2010), para. 8.2; and *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 6.2.

7.3 The Committee takes note of the State party's argument that the authors have failed to request the Prosecutor's Office to initiate a supervisory review of the decisions of the domestic courts. The Committee recalls its jurisprudence, according to which a petition to a Prosecutor's Office requesting a review of court decisions that have taken effect does not constitute an effective remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[6] Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

7.4 The Committee notes the authors' claim that their request to hold several pickets on 22 August 2011 was rejected by the Gomel City Executive Committee, and that neither the Executive Committee nor the courts considered whether the limitations imposed on the authors' rights under decision No. 299 were justified by reasons of national security or public safety, public order, or protection of public health or morals, or whether they were necessary for protection of the rights and freedoms of others. The authors argued, therefore, that decision No. 299, adopted on the basis of the Public Events Act, unnecessarily limited the very essence of the rights guaranteed under articles 19 and 21 of the Covenant. The Committee further notes the author's claim that their rights under articles 19 and 21, read in conjunction with article 2 (2) and (3), of the Covenant, were violated. In the absence of any information provided by the State party on the facts of this communication, the Committee considers that the authors have sufficiently substantiated their claims under articles 19 and 21, read in conjunction with article 2 (2) and (3), of the Covenant, for the purposes of admissibility and therefore considers it admissible under article 2 of the Optional Protocol.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, as required under article 5 (1) of the Optional Protocol.

8.2 The Committee notes the authors' claim that decision No. 299 of the Gomel City Executive Committee unduly restricts the right to freedom of expression and the right of peaceful assembly by imposing on the organizers of public events an obligation to conclude paid contracts with city services, and by designating one single, remote location for all public events held in Gomel, a city of 500,000 inhabitants. The Committee also notes the authors' allegation that the formal application of decision No. 299 by the Gomel City Executive Committee, without consideration of the necessity of the limitations in relation to the exercise of their rights, constitutes an unjustified restriction on their rights under articles 19 and 21 of the Covenant.

8.3 The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it is stated that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, and that such freedoms are essential for any society. They constitute the foundation stone for every free and democratic society (para. 2). The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only as provided by law and necessary: (a) for the respect of the rights and reputations of others; and (b) for the protection of national security or public order (*ordre public*) or of public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.[7] The Committee also recalls that it is for the State party to demonstrate that the restrictions on the authors' rights under article 19 of the Covenant were necessary and proportionate.[8]

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[6] See, for example, *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; and *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3.

[7] See Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 22.

[8] See, for example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5; and *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

8.4 The Committee notes that the refusal to authorize the pickets was based on decision No. 299 of the Gomel City Executive Committee of 2 April 2008, which was adopted on the basis of the Public Events Act of 30 December 1997. The Committee observes, however, that neither the State party nor the national courts have provided any explanations as to how such restrictions, namely limiting pickets to a certain predetermined location and requiring that the organizers conclude service contracts with a number of government agencies in order to hold a picket, were justified pursuant to the conditions of necessity and proportionality set out in article 19 (3) of the Covenant. In the absence of any explanation by the State party, the Committee concludes that the rights of the authors under article 19 (2), read in conjunction with article 2 (3), of the Covenant have been violated.

8.5 The Committee notes the authors' claim that their right to freedom of assembly under article 21 of the Covenant was also violated by the refusal of the municipal authorities to allow the pickets to be held. In this context, the Committee recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for public expression of an individual's views and opinions and is indispensable in a democratic society. This right entails the possibility of organizing and participating in a peaceful assembly, including a stationary assembly (such as a picket) in a public location. The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience, and no restriction to this right is permissible, unless it (a) is imposed in conformity with the law; and (b) is necessary in a democratic society, in the interests of national security or public safety, public order (*ordre public*), protection of public health or morals or protection of the rights and freedoms of others. When a State party imposes restrictions with the aim of reconciling an individual's right to assembly and the aforementioned interests of general concern, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it. The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.[9]

8.6 In the present case, the Committee must consider whether the restrictions imposed on the authors' right to freedom of assembly are justified under any of the criteria set out in the second sentence of article 21 of the Covenant. In the light of the information available on file, the Committee notes that the municipal authorities have not provided any justification or explanation as to how, in practice, the authors' pickets would have violated the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others, as set out in article 21 of the Covenant.

8.7 The Committee notes that it has dealt with similar cases in respect of the same laws and practices of the State party in a number of earlier communications.[10] In line with those precedents, and in the absence of any explanation by the State party regarding the matter, the Committee concludes that, in the present case, the State party has violated the authors' rights under article 21, read in conjunction with article 2 (3), of the Covenant.

8.8 In the light of the above-mentioned conclusion, the Committee decides not to examine separately the authors' claims under articles 19 and 21, read in conjunction with article 2 (2) of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the authors' rights under articles 19 (2) and 21, read in conjunction with article 2 (3), of the Covenant. The Committee reiterates its conclusion that the State party has also violated its obligations under article 1 of the Optional Protocol.

[9] See *Poplavny v. Belarus*, para. 8.4.

[10] See, for example, *Sudalenko v. Belarus*; *Poplavny v. Belarus*; *Derzhavtsev v. Belarus* (CCPR/C/115/D/2076/2011); *Korol v. Belarus* (CCPR/C/117/D/2089/2011); *Androsenko v. Belarus*; *Poplavny and Sudalenko v. Belarus* (CCPR/C/118/D/2139/2012); and *Koreshkov v. Belarus* (CCPR/C/121/D/2168/2012).

10. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the individuals whose Covenant rights have been violated with an effective remedy in the form of full reparation. Accordingly, the State party is obligated to, inter alia, provide Leonid Sudalenko and Anatoly Poplavny with adequate compensation, including reimbursement for any legal costs or other fees incurred by them, and appropriate measures of satisfaction. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, the Committee reiterates that, in accordance with its obligation under article 2 (2) of the Covenant, the State party should review its legislation, in particular the Public Events Act of 30 December 1997, as it has been applied in the present case, with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.[11]

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

[11] See, for example, *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 11; *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010 and Corr.1), para. 9; *Govsha et al. v. Belarus* (CCPR/C/105/D/1790/2008), para. 11; mutatis mutandis, *Sudalenko v. Belarus* (CCPR/C/113/D/1992/2010), para. 10; and *Poplavny v. Belarus*, para. 10.